IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 897 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY @ VIJU RAMUBHAI UTTAM CHANDANI

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner No. 1

MR DP JOSHI, APP for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/01/2002

ORAL JUDGEMENT

The petitioner came to be externed out of the territorial areas of the districts of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana for a period of two years by virtue of an order passed by Dy. Commissioner of Police, Zone 5, Ahmedabad City on August, 26, 2000. The petitioner seeks to challenge that order in this petition under Section 226 of the Constitution of India on various grounds stated in the petition.

2. Before passing the order, a notice under Section

59 of the Bombay Police Act was issued which was not replied to by the petitioner. The order, therefore, came to be passed. The said order was challenged before the Government as provided under Section 60 of the Bombay Police Act. The appeal came to be dismissed on November 03, 2001 and hence this petition.

3. Learned advocate Mr.Thakkar appearing for the petitioner has restricted his arguments to the fact that the petitioner is externed from Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana districts. However, it is clear that the activities of the petitioner are restricted to Ahmedabad City area. There is nothing to indicate that he had his activities in other contiguous districts like Ahmedabad Rural, Gandhinagar, Kheda or Mehsana and in absence of such material, the satisfaction is recorded by the externing authority for externing him from these districts also is vitiated and it is not permissible in law. He, therefore, submitted that the order of externment may be quashed and set aside.

4. The petition is opposed to by Mr.D.P. Joshi, learned A.P.P.

5. There is no dispute about the fact that the activities of the externee appears to be restricted to Kubernagar area of the Ahmedabad City. There is nothing to indicate that any activities attributable to the petitioner in the contiguous districts of Ahmedabad Rural, Gandhinagar, Kheda or Mehsana. There is nothing to indicate that the externee may pursue his activities from those contiguous districts. The satisfaction is, therefore, without any legitimate material or basis. The order, therefore, requires to be quashed and set aside. In this regard, reference may be had to the decision of this Court in the case of Mustufamiya Pirsahedmiya Saiyed Vs. State of Gujarat, 1999 (1) G.L.H. 913.

6. In the result, the petition is allowed. The order of externment passed by the Dy. Commissioner of Police, Zone 5, Ahmedabad City on August 26, 2000, in Externment Case No.251 of 2001 as confirmed by the Appellate Authority vide an order dated 3.11.2001, externing the petitioner-Vijay @ Viju Ramubhai Uttam Chandani is hereby quashed and set aside. Rule is made absolute. Direct service permitted.

Sd/-

[A.L. Dave, J]

'Bhavesh'